

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LARRY ANDERSON)

Appearances:

For Appellant: Larry Anderson,
in pro, per.

For Respondent: Noel J. Robinson
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Larry Anderson against a proposed assessment of additional personal income tax in the amount of \$308.50 for the year 1979.

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The sole question for decision is whether appellant qualified as a head of household for the year 1979.

Appellant filed his California personal income tax return for the year 1979 as a head of household, claiming his two children as the persons qualifying him for that status'. Respondent determined that appellant did not qualify for such status in 1979 because his children had not occupied appellant's household for the entire year and his home was not their principal place of abode.

The term "head of household" is defined in section 17042 of the Revenue and Taxation Code which provides, in pertinent part:

[A]n individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, and . . .

(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

(1) A son, stepson, daughter, or stepdaughter of the taxpayer

Section 17042 provides that the taxpayer's home must constitute the principal place of abode of a qualifying individual for the taxable year. We have previously held that, where significant amounts of time are spent by a qualifying individual in two different households, the place where the greater amount of time was spent is considered the "principal place of abode." (Appeal of John William Branum, 'Cal. St. Bd. of Equal., Aug. 16, 1979.) For purposes of head of household filing status, a qualifying individual cannot have two principal places of abode. (See Appeal of John William Branum, supra.)

On the head of household questionnaire filled out by appellant, he responded "No" to the question, "Did [the qualifying dependent] live with you for the entire year (1979)?" He has also stated that he and his children lived at separate locations during the year, but that he maintained a room for them in his home. At the hearing on this matter, appellant said that he did not know

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exactly how long his children stayed with him, but that they had keys to his house and "were in and out."

Appellant has not demonstrated that either of his children spent a greater amount of time in his home than in their mother's home. Therefore, we cannot say that appellant's home constituted the principal place of abode for either of his children during 1979.

In addition, the qualifying individual must occupy the **taxpayer's** household for the entire taxable year, except for temporary absences. (Appeal of Dennis Clyde Hamilton, Cal. St. Bd. of Equal., April 6, 1978; Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977; see also former Cal. Admin. Code, tit. 18, reg. 17042, subd. (b)(1), repealer filed Dec. 23, 1981, Register 81, No. 52.) Appellant has not shown that his children's absences from his home were merely temporary.

Here appellant does not argue that the children spent more time at his home. Instead appellant argues that he should be allowed head of household status simply because he paid most of the expenses for the children's clothing, food, shelter, and medical care while **they** lived with their mother. He considers that he maintained two households instead of just one and should, therefore, be allowed head of household status. However, substantial contribution to a child's support and maintenance of a household for the benefit of a child are not sufficient to qualify as a head of household; the taxpayer must also occupy that same household. (W. E. Grace, 51 T.C. 685 (1969), affd., 421 F.2d 165 (5th Cir. 1969); Levon P. Biolchin, ¶ 69,197 P-H Memo. T.C. (1969), affd., 433 F.2d 301 (7th Cir. 1970).) Appellant, therefore, cannot qualify as a head of household simply because he maintained the principal place of abode for his children without being an occupant.

For the reasons stated above, we must sustain respondent's action.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Larry Anderson against a proposed assessment of additional personal income tax in the amount of \$308.50 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this **28th** day of **July**, 1983, by the State Board of Equalization, with Board **Members** Mr. Bennett, Mr. Collis, Mr. Dronenburg, **Mr.** Nevins and Mr. Harvey present.

_____	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member
_____	, Member

***For** Kenneth Cory, per Government Code section 7.9